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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,814	05/28/2004	Alan Bauer	27475/07445	3813
24024	7590	09/08/2006	EXAMINER	
CALFEE HALTER & GRISWOLD, LLP			WUJCIAK, ALFRED J	
800 SUPERIOR AVENUE				
SUITE 1400			ART UNIT	
CLEVELAND, OH 44114			PAPER NUMBER	
3632				

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/709,814	BAUER, ALAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alfred Joseph Wujciak III	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 May 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5,7,8,11-15,17-21 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,7,8,11-15,17,19-21 and 27-29 is/are rejected.
- 7) Claim(s) 18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 May 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/10/06.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

This is the final Office Action for the serial number 10/709,814, Bathroom Accessory Mounting Assembly and Method of Mounting, filed on 5/28/04.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-8, 11, 13-15, 17 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # 2,144,602 to Balmer.

Balmer teaches a bathroom accessory mounting assembly comprising a mounting bracket (6) that includes an axially extending body portion and an accessory post (5 and 20) that is mounted on the axially extending body portion. The mounting bracket includes a snap flange (3) located on the axially extending body portion. The snap flange includes a camming surface (30) that engages inner surface of the accessory post. The accessory post including a recess (34) extending through. The axially extending body comprises a flange (7). The mounting bracket further comprises a retaining flange (located at curve part of element 6, below element 7). Furthermore, Balmer teaches the mounting bracket having one rib (figure 1 shows a longitudinal line in the middle of element 6) located on axially extending body portion. The post includes a generally toroidal portion having inner and outer diameters with thickness therebetween. The

axially extending body portion is generally toroidal (23) having inner and outer diameters with thickness therebetween. The post having a larger inner diameter than the outer diameter of axially extending body portion and they are connected together. The accessory includes a functional member (10) connected to the post.

Claims 21 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent Application Publication #2002/0023993 to Fleischmann et al.

Fleischmann et al. teaches an accessory system comprising a mounting subassembly including a mounting bracket (22) and an accessory (40). Wherein an inner surface of the accessory is friction fit with an outer surface of the mounting bracket such that no play exists between the accessory and the mounting bracket. The mounting bracket includes at least one rib (38). The rib contacts the inner surface (58) of the accessory. The diameter of the inner surface of the accessory is slightly larger than the diameter of the outer surface of the mounting bracket to form the friction fit between the accessory and the mounting bracket.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balmer.

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Balmer teaches the snap flange having a main portion that is integral to the body portion but fails to teach the main portion is forming in a u-shaped cutout. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified shape of main portion to u-shaped cutout to provide convenience for sliding the snap flange on the body portion without removing the fastener (28).

***Allowable Subject Matter***

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art fails to teach the functional member is a towel bar, a towel ring or a paper holder.

***Response to Arguments***

Applicant's arguments with respect to claims 1-5, 7-8, 11-15, 17-21 and 27-29 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's argument on page 9 stating that Fleischmann fails to teach an accessory is connected with a mounting bracket by friction fit. The examiner disagrees with the applicant because it requires some kind of force to connect two elements together. Once two elements are connected, they create friction force. If there was no friction force, the two

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elements would not be remained connect to each together and they will fall apart from each other.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III

Primary Examiner

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9/1/06